K 1951

File No. S. Dwr. 7/51

Legal DEPARTMENT

E BRANCH.

Subject:— Suits: Dharwar

Institution of a suit against Shri Dhanur Hiremath of Dharwar for taking possession of Vacant Govt. Building leased out to him on a Rental of Rs. 15/ a month.

File No. S. Dwr. 7/51.

Std. Sectl. Slip 24-B

CONTENTS.

Legal Department File No. 5. Dwr. 7/51.

Sr. No.	Compilation No.	Subject	Pages.

Suits Dharwar.

C. S. No. 168 of 1951.

State of Bombay

Vs.

Basayya Mahadivayya Dhanmur-
thiremath.

Institution against shri Dhanmur thiremath of Dharwar for taking possession of vacant Govt. Building

1 — 28

Registered Pvt AD.

No.ES/V/21-Gadag,
Poona, 4th September 1950.

To

The Remembrancer of Legal Affairs to
Government, Bombay State, Bombay.

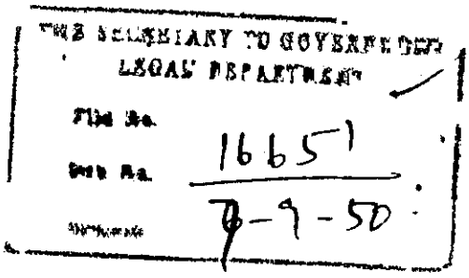
Subject:- Government building in the premises of the Ex-Criminal Tribes Settlement, Gadag. Taking possession of - from Shri Dhannur-Hiremath. Institution of - Civil proceedings for the same -

Due to closure of the Ex-Criminal Tribes - Settlement at Gadag, certain buildings and sites in the Settlement premises at Gadag under the charge of this Department have been placed at the disposal of the Director of Labour Welfare for the use of Labour Welfare Centres, as per Government Labour Department Resolution No. 162/43 dated the 22nd December 1948. Excepting the school building and the playground which have been handed over to the Gadag Municipality, almost all the remaining buildings have been handed over to the Labour Welfare Department. But the building which was formerly used for a grain shop in the Settlement could not be handed over to the Labour Department, till now as the present occupant of the building, Shri Dhannur-Hiremath to whom it was leased in 1945 is persistantly avoiding to give the vacant possession of the building according to the terms of the lease entered into by him. All the persuasive efforts of the officers of this Department to get the possession of the building from Shri Dhannur-Hiremath have failed. The Assistant Backward Class Officer, Karnatak Circle, Dharwar (my sub-ordinate officer having jurisdiction over the area) has reported in consultation with the Government Pleader, Dharwar that the possession of the building could only be taken by Civil process, i.e. by filing an ejectment suit under the provisions of the Transfer of Property Act (1882).

A copy of his report to-gether with the Rent-Note (Lease Deed) and other relevent papers, in original in the case are enclosed.

In the circumstances I request that Government in the Legal Department may kindly be moved to sanction the institution of eviction proceedings for the purpose of taking over the vacant possession of the building in question from Shri Dhannur-Hiremath under Rule 109 of the Rules for the Conduct of Legal Affairs of Government.

Very early action is requested.



(M. N. Heble)
Backward Class Officer,
State of Bombay, Poona.

Agk/1.9.

Legal Department.

1. This is a proposed eviction suit against B.M. Dhannur-Hiremath of Gadag, in respect of a Government building, leased out to him and for damages past and future.

2...Sanction may, therefore, be accorded to the institution of the same on the lines of the accompanying Memorandum of Instructions.

3. The District Government Pleader is requested to seek further instructions, if any, from the Backward Class Officer, State of Bombay, Poona.

Dr 9
815

Solicitor (M.L.) Ok
8/5/51

THE SECRETARY TO GOVERNMENT
P 9745
S 16-5-51
E

× Secy. Education Depart.

Dr
7/5

L. D. U.O. to L.D. 14/5/51
15 MAY 1951
E

Minister
11/5

× No. 7379
dt 9-5-51

No. 7880

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 18th May 1951.

Subject: Institution of suit against Shri B.M.Dhannur Hiremath of Gadag.

MEMORANDUM.

The District Government Pleader, Dharwar is informed that sanction is accorded to the institution of a suit against Shri B.M.Dhannur Hiremath for eviction and damages and he is requested to take the necessary steps to institute the suit on the lines of the memorandum of instructions, a typed copy of which is sent herewith in advance.

Papers received from the Backward Class Officer in file ~~are~~ one herewith accompany.

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Dharwar.

KML/17

G.R.LD. NO. 8019 dt. 21-5-51
Sent to the Press on 23-5-51

28/15.

A/ *Suit :*

Dharwar.

Institution—against Shri Dhannur Hiremath of Dharwar for taking possession of vacant Government Building.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 8019.

Bombay Castle, 21st May 1951.

Letter from the Backward Class Officer, State of Bombay, Poona, No. ES/V/21-Gadag, dated the 4th September 1950—Forwarding report from the Assistant Backward Class Officer, Karnatak Circle, Dharwar, and requesting sanction to the institution of a suit against Shri Dhannur Hiremath of Dharwar for taking possession of vacant Government Building and damages.

Memorandum to the District Government Pleader, Dharwar, No. 7880, dated the 18th May 1951—Forwarding a copy of Memorandum of Instructions with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the institution of a suit against Shri Dhannur Hiremath of Dharwar on the lines of the accompanying Memorandum of Instructions.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

[P.T.O.

To

* The Education Department,
* The Backward Class Officer, State of Bombay, Poona,
The District Government Pleader, Dharwar (with two copies of the Memorandum of Instructions).

* With a copy of Memorandum of Instructions.

No. of 1951.

Copy forwarded for information and guidance to .

Subject after ...
file in S. Dharwar/57 (Cmd)

1/8/57

Asst

1-8

MEMORANDUM OF INSTRUCTIONS.

1. This is a proposed suit in eviction against one Shri Basayya Mahadivayya Dhannur-Hiremath of Gadag in respect of a Government building leased out to him on a rental of Rs. 15 a month.

2. Facts giving rise to the cause of action for this suit are as under :—

A Government building situated within the premises of the Ex-Criminal Tribe Settlement, Gadag, was leased to B. M. Dhannur-Hiremath of Gadag under a rent-note, dated the 18th June 1945, on a monthly rental of Rs. 15. The lessee actually occupied the building from 13th January 1945. The Settlement at Gadag was closed in 1947. The lessee was thereafter asked to hand over the rented building but he refused. A notice to quit was served on the lessee on 30th June 1948 without any result. The matter was referred to the Government Pleader, Dharwar, for opinion and advice by the Backward Class Officer. He advised the department to give a fresh notice and sue the lessee in eviction in Civil Court. Accordingly, a fresh notice to quit was served on the lessee on 9th June 1950. As the lessee did not give the vacant possession of the rented Government building, the civil suit was the only remedy. Hence this proposed suit.

3. In this case the State of Bombay is the plaintiff and Bassayya Mahadivayya Dhannur-Hiremath of Gadag is the defendant. The suit should be instituted in the forum having jurisdiction in the matter. The reliefs to be prayed for should be (1) handing over vacant possession of the suit property to the plaintiff with damages for illegal use and occupation of the same from 1st July 1950 up to date at the rate of Rs. 15 a month and future mesne profits at the same rate and costs of the suit. Arrears of rent, if any, prior to the second notice may, also, be claimed in the suit.

No. 541 dated 15-12- July '53,
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,

Bombay.

Subject :- L.C.Suit No.168 of 1951 - Dharwar - Recommendation of appeal in -

Reference- R.L.A's Memo No.7880 dated 18-5-1951.

Sir,

In continuation of this office No.515 dated 6th July '53, I wish to submit the following report recommending an appeal from the decision of the Civil Judge :-

The suit was instituted by the Government for the purpose of recovering from the defendant possession of the suit property which the defendant occupied as a tenant of Government for arrears of rent and for certain other reliefs. The Government's averments were that the defendant was its tenant, that the tenancy was terminated by a notice given on 7-6-1950 to the defendant to hand over vacant possession of the premises at the end of that month, that the defendant failed to do so and that possession of the property should be awarded together with damages accruing due from the date of the termination of the notice.

The defendant resisted the suit mainly on the ground that the notice was not valid in law and relied for its contention upon the provisions of section 106 of the Transfer of Property Act. By a rent note executed on 18-6-1945 for a period of two years the defendant stated that he was occupying the building from 13-1-1945. He also stated in the rent note that he would vacate the building as soon as a notice was given to him by the Backward Classes Officer on his behalf. Now under section 106 of the T.P.Act a lease

for other than agricultural or industrial purposes - is to be deemed, in the absence of a contract ~~xxxxx~~ a custom or local usage to the contrary, ~~is to be~~ deemed to be a monthly tenancy terminable by the landlord giving a clear 15 days' notice ending with a month of the tenancy.

It was contended by the defendant that the tenancy in this case ended on the 13th of each month and as the notice previous to the suit did not require the defendant to hand over possession on the 13th it was a bad notice and made the suit untenable. It was argued on behalf of the plaintiff that there was a contract to the contrary in the present case to be found in the rent note itself making it obligatory upon the defendant to give possession as soon as the notice was recived by him.

The learned Civil Judge has held on the authority of the rulings cited in his judgment that the expression underlined above in section 106 of the T.P.Act governs only the period of the notice but does not control the requirement that the period of a notice should end with the end of ~~xxx~~ a month of the tenancy. I humbly differ.

In my opinion the expression controls the whole of the section and there is no justification for splitting the section and taking the portion underlined as applying to some portion of the section and not to other portions. The cases cited can distinguished. Hence I recommend that an appeal be filed from the judgment in this case.

~~An uncertified copy of the judgment is sent~~ herewith.

Yours faithfully,

B. A. Mahesh
Dist. Govt. Pleader.

Submitted

A copy of judgment in C.S NO 168/51 decided against the Govt on 30.6.53 is received & put up below. The D.G.P's in favour I felt an appeal.

for orders

16/7 sd (M)

13-

Received on - 7-7-1951.

Registered on - 7-7-1951.

Decided on - 30-6-1953.

Duration - 1 year, 11 months, and 23 days.

B| In the Court of the Civil Judge, (S.D.), Dharwar. At Dharwar.

Exh. No.35.

Long Cause Civil Suit No.168 of 1951

Pleaders :-

Shri.B.A.Mahishi, Asstt. Govt. Pleader.

Shri.I.G.Hiregoudar.

The State of Bombay ----- Plaintiff.

Versus.

Basayya Mahadevayya Dhannur-Hiremath, age 40, of Gadag, trade. ---- Defendant. B

Claim Rs. 360/-

The plaintiff, the State of Bombay, sues to recover vacant possession of the suit property with Rs.180/- damages for illegal use and occupation by defendant at the rate of Rs.15/- per month and future mesne profits at the same rate and costs of the suit.

2. Plaintiff's case is as follows :-

Defendant took the suit property on lease from plaintiff under a rent note dated 18-6-1945 for a monthly rent of Rs.15/-. The lessee actually occupied the building from 13-1-45. The suit building is situated in the ground of the Ex-criminal Tribes Settlement in Gadag. That settlement was closed in 1947. Plaintiff asked defendant to hand over possession of the

building but as he refused, plaintiff gave a notice to quit which was served on defendant on 30-6-1948. A further attempt was made to evict him servingupon him a fresh notice on 9-6-1950 but thedefendant failed to give possession and the plaintiff has to file this suit. Plaintiff claims damages at the rate of Rs.15/- from 1st. July, 1950 till date of suit and future mesne profits at the same rate.

3. The defendant by his written statement, Exh.21, contended that the suit property was leased to defendant by Government on a monthly rent of Rs.15/-, that defendant is running a ration shop there all along as he was asked by the Collector of Dharwar for the benefit of the Criminal Tribes Settlement, that as the shop is being run even till this day, for public purposes, Government cannot evict defendant causing great hardship and injustice even to the public taking the benefit of the shop, that there are no private houses available in the said locality for running the shop, that the defendant has been regularly sending the rent by money orders and that he is willing to pay the rent due, that the notices given by plaintiff to defendant are not legal and adequate, that they are invalid under section 106 of theTransfer of Property Act, that the defendant's tenancy is not terminated legally, that the defendant is not liable to pay any damages, that no hardship is caused to the plaintiff if defendant is not evicted and that consequently, the suit should be dismissed.

4. The issues for decision are :-

1. Whether the notice to quit is proper and legal ?
2. Whether the defendant is liable to pay

any damages ? If so, to what extent ?

3. Whether the plaintiff is entitled to possession sought ?

4. What order ?

5. My findings are :-

1. No. 2. Not damages but rent at Rs.15/- per month.

3. No. 4. See order below.

Reasons

6. Admittedly defendant took on lease the suit premises from plaintiff, the Government, on a monthly rent of Rs.15/-. Defendant has passed a rent note. It is produced at Exh.34. Plaintiff has produced at Exh.32 a copy of the notice given to defendant on 7-6-1950. Thereby , defendant was called upon to vacate the ~~exxk~~ premises on the expiry of 30th June 1950. Defendant admits that notice also. It was urged for the defendant that the notice is not according to law in view of section 106 of the T.P.Act. The rent note was executed on 18-5-1945. But it mentions that the lease was to start on 13-1-45 It stipulates the monthly rent of Rs.15/-. But the period of the lease was not fixed. There is also an agreement that defendant was to give up possession whenever plaintiff would send a notice demanding possession. Under section 106, such a lease will have to be considered as a lease from month to month. Under section 106, such a lease is terminable by 15 days' notice expiring with the end of the month of the tenancy It is urged for the defendant that the plaintiff's notice does not satisfy this condition about the notice. The learned

pleader for the plaintiff urges that in view of the clear term that a notice to quit on demand was sufficient, section 106 does not come into operation. Section 106 begins - "In the absence of a contract to the contrary". The learned pleader for the defendant, however, relied on some rulings. They are - 'Vidyanath Basak and another vs. Onkarmal Manikial and others' A.I.R. 1938 Calcutta page 656, (2) Mukundchand v. 'Gulab chand' A.I.R 1950 Ajmer P.79. The latter case refers to a decision of the Bombay High Court in the 'Utility Articles Manufacturing Company v. Motilal Bombay Mills Ltd.' A.I.R.1943 Bombay P.306. That Bombay decision was followed in that case. Relying on these cases , the learned pleader for the defendant urges that the condition in para 2 of the rent note does not dispense with the requirement that the notice should expire with the expiration of the month of the tenancy. He, however, admits that the notice dispenses with the requirement of 15 days' notice. He points out that the tenancy started on 13th and that the month of the tenancy, should, therefpre, expire on the 13th. Such a distinction is clearly made in 'Mukundchand v. Gulabchand' A.I.R.1950 Ajmer P.79. In that case, the condition in the rent note was that either party might terminate the tenancy after one month's notice. After discussing various cases, His Lordship Oak J. remarked as follows :- "In the present case, there was a special contract empowering either party to terminate the lease by one month's notice. This contract abbrogated the first rule laid down in section 106 T.P.Act. But the lease did not contain any provision against the second rule." In 'Utility Articles Manufacturing Co. v. Motilal Bombay Mills Co. Ltd. 45

B.L.R. P.605 (A.I.R.1943 Bombay.P.306), the stipulation was that either party would give one clear month's notice determining the tenancy. His Lordship Beamount, J.J. discussed the nature of a monthly tenancy with a view to consider whether it was a tenancy limited by time so as to invoke the application of section 110 of the T.P.Act and the he concluded about the notice to quit as below which I quote with great respect (P.611) "One result of that doctrine is that a notice to quit must always expire with the expiration of the period of the original tenancy. Ofcourse the rule is subject to any contract that the parties may make between themselves. But a provision as in the clauses of this agreement that either side will give one clear month's notice to determine the tenancy does not in my opinion affect the rule that the notice must expire with the expiration of the tenancy." Considering these authorities, it is clear that the second requirement of section 106 that the notice to quit must expire with the expiration of the tenancy can be avoided by a contrary to the contrary. What those cases held, therefore , is that the mere provision of fixing the period of the notice is not sufficient to contradict the second requirement of section 106. In the present case, the stipulation is that defendant will vacate when the settlement officer will demand by his notice. The wordings of the stipulations in the two cases discussed above when [illegible] with the wording of the stipulation

present case clearly go to support the defence that the stipulation in the present case does not amount to a contract to the contrary so far as the second requirement of section 106. is concerned. There is nothing more than merely doing away with the requirement of the 15 days' period. It appears that a reasonable notice was implied and in fact, the notice given in the present case allowed a period of three weeks to defendant to quit. So, I am not satisfied that the stipulation can be construed as providing for a notice to quit on demand. The learned pleader for the defendant, however, urges that even if the period of the notice is reduced to one moment that moment shall have to expire with the expiration of the month of the tenancy. The Madras case in ' Nessa Kutti v. Kojhi Kote Puthia" A.I.R. 1928 Madras P.67 is referred in the Ajmer ruling. Therein the condition was that the land was to be surrendered whenever required. It was held that no notice was necessary before the landlord could file a suit in ejectment. But the learned pleader for the defendant points out that what was held ultimately in that case was that no notice was necessary. In the present case, a notice is stipulated in the contract itself. He further urges that if a notice is required, then whatever may be the period allowed by the notice, that period must expire with the expiration of the month of the tenancy. I agree with the learned pleader that something more than merely fixing the period or dismissal with the period is necessary to get [illegible]ntract to the contrary of the second condition [illegible]. I, therefore, hold that the notice does not satisfy the second

condition of section 106 as it does not expire with the expiry of the tenancy i.e. 13th. So, it is ineffective in determining the tenancy. Plaintiff's suit for possession must therefore, fail.

7. Plaintiff has demanded damages for unauthorised use and occupation from defendant for one year prior to the suit. The rate claimed is the same as that of the stipulated rent. It is not urged for the defendant that he paid the rent for the period prior to the suit for which the damages are claimed. He also stated in the written statement that he was ready to pay the amount as rent. So, I think that plaintiff should get a decree for Rs.180/- as rent for the period of one year prior to the suit.

8. Plaintiff has failed on the question of eviction and is entitled to a decree for Rs.180/-. Consequently, I order that the parties should bear their own costs.

O r d e r

9. The claim for eviction is rejected. Defendant do pay Rs.180/-. No order as to costs.

30-6-1953.

Sd/- V.B.Potdar,
Civil Judge,
Senior Division, Dharwar.

Legal Department.

Solicitor (M.L.)

Dharwar Court Civil Suit No. 168 of 1951.

The State of Bombay had filed this suit against Shri Hiremath for possession of the Government premises let out to him, and for damages for use and occupation after the tenancy had been terminated. The Trial Court has awarded the claim for damages for use and occupation but has dismissed the claim for possession on the ground that the notice terminating the tenancy was not valid and legal.

2. Certain Government premises situate at Gadag were let out to the plaintiff under a rent note dated the 18th June 1945 for a period of two years and the monthly rent was fixed at Rs. 15/- . At the end of the 2 years the tenant was allowed to continue in possession on the same terms without any definite period being fixed for the duration of the tenancy. The agreement of lease contained a clause that the defendant was to give up possession whenever plaintiff would demand the same by notice.

3. A notice terminating the tenancy was accordingly addressed to the defendant on 7-6-1950. By that notice the plaintiff was asked to vacate the premises by the end of June 1950. When he did not vacate the premises a suit was filed against him for possession and for damages for use and occupation.

4. The defendant's main contention was that the notice terminating the tenancy was invalid as the tenancy was not terminated at the expiration of a month of the tenancy. This contention was accepted by the Trial Court and the claim for possession was dismissed.

5. The learned Government Pleader has expressed the view that this is a proper case for going to the District Court in appeal, as the decision of the Trial Court is not correct.

6. There is a definite clause in the agreement of tenancy that the tenant was bound to give up possession when the landlord would call upon him to do so by addressing a notice to him. The learned Judge construed this to mean that there was a contract to reduce the period of notice but that contract did not affect the other requirement of section 106 of the Transfer of Property Act, viz. that the tenancy should be terminated at the end of a month of the tenancy. It seems that in this case the agreement recited that the tenancy began on 1-1-1945. It was, therefore, contended on behalf of the defendant that the tenancy should have been terminated by the 13th day of the same month and not on any other date; but the plaintiff's notice terminated the tenancy on the 30th June, and therefore that notice was illegal.

7. Section 106 of the Transfer of Property Act provides that in the absence of a contract to the contrary a lease from month to month may be terminated by 15 days' notice expiring with the end of a month of the tenancy. The contention of the Government was that the agreement of lease contained a contract that the tenancy could be terminated at any time merely by informing the tenant that the Government needed the premises. This contract to the contrary operated in this case and therefore notice of termination of the tenancy was not necessary in law. This view is supported by the ruling of the Madras High Court in A.I.R. 1928 , Madras p. 67. In that case the condition was that the land was to be surrended whenever required. It was held that no notice was necessary before the landlord could file a suit in ejectment. The relevant clause in the present agreement of lease also provides that the tenant was to surrender possession whenever the Government would require him to do so. The present case is therefore on all fours with the Madras case and the learned Judge should have, therefore, held

R3 24

that no notice terminating the tenancy was necessary at all in this case.

8. Further it seems that although the agreement of lease recorded that the tenancy began as from 13-1-1945, later on rent had been paid by the tenant and accepted by the Government for every month beginnin with the first day of that month. The month of the tenancy commenced on the first of every month and expired on the last date of that month. The notice terminating the tenancy required the tenant to surrender possession at the end of June 1950 i.e. at the expiry of the month of the tenancy. The notice was, therefore, valid in law. This aspect of the case nas not been considered at all by the Trial Court.

9. Government may, therefore, accept the recommendation of the District Government Pleader and instruct him to file an appeal in the District Court , Dharawar, in this case.

Sd/-
22/7

Secy.
22/7

Immediate.

No.15585/G 25/7/1
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 22nd July 1953.

Subject:- L.C. Suit No. 168/51.
Secy/Bombay v. Hiremath

MEMORANDUM.

With reference to his letter No. 541 dated the 15th July 1953 on the above subject, the District Government Pleader, Dharwar is informed that Government has decided to file an appeal in the District Court, Dharwar against the decision of the Civil Judge (Senior Division), Dharwar dated the 30th June 1953. He is, therefore, requested to take early steps to file an appeal in time.

Issued 22/7

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Dharwar.

BM.
22.7.

Copy forwarded with compliments to the Collector of Dharwar.

Submitted for signature
VK
22/7

Suits.

Dharwar.

Institution - against Shri Dhannur Hiremath of Dharwar for taking possession of vacant Government Building.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 10428/E
Bombay Castle, ~~September~~ 9th October 1953.

Read Government Resolution, Legal Department No. 8019, dated the 21st May 1951.

Letter from the District Government Pleader, Dharwar

In the Court of the Civil Judge (Senior Division), Dharwar.	:	No. 515
	:	dated the
Civil Suit No. 168 of 1951	:	6th July
The State of Bombay ... Plaintiff	:	1953
vs.	:	
Basayya Mahadevayya Dhannur-Hiremath.. ... Defendant	:	stating

that the suit noted in the margin was decided by the Civil Judge (Senior Division), Dharwar, on 30th June 1953 when the following order was passed:-

"Plff to recover Rs. 180/- from the defendant. Claim for eviction is rejected. No order as to costs".

Letter from the District Government Pleader, Dharwar, No. 541 dated the 15th July 1953 recommending the institution of an appeal.

RESOLUTION: Sanction is accorded to the institution of an appeal in the District Court, Dharwar against the decision of the Civil Judge (Senior Division), Dharwar, dated the 30th June 1953.

By order and in the name of the Governor of Bombay,

original R.T. KATARKI,
Deputy Secretary to Government.

To

The Education Department,
The Backward Class Officer, State of Bombay, Poona,
The District Government Pleader, Dharwar.

hsp/11/9

Submitted for Signature
8/10
Sept 8/10/53 28 (civil)

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28

Fikri S. Dwi 7/51

10/11

Sept. AD 10.X.53

S Dwi 7/51

13-10